

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1, 4, 5, 6-19 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al. (WO 1996/008441) in view of Huber (US 3 032 037) and Prentiss (US 6 440 100).**

Regarding independent claims 1 and 24, and claims 5 and 6:

Todd discloses an apparatus for use with a milking machine comprising one or more teat cups (as noted in page, 6, lines 5-7) and a vacuum source providing a vacuum in the teat cups, for collecting a small volume of liquid for cold storage, the apparatus comprising:

a flexible bag (200; made from a “non-rigid plastic material,” page 4, lines 10-11) comprising a collar (210) defining an opening;

a housing (100) for the flexible bag comprising an inlet conduit (119) extending into the housing for receiving the liquid from the one or more teat cups and comprising an opening (through which the conduit extends) within the housing for delivering the liquid;

a port (107) for providing a vacuum within the housing from said vacuum source; and

a retaining system (lug around 117, at minimum) that retains the collar of the flexible bag about the inlet conduit so that the bag receives liquid from the inlet opening; and

a transfer system (see below) that transfers the vacuum from the port for providing a vacuum within the housing to the inlet conduit when the collar of the flexible bag is retainable about the inlet conduit by the retaining system, the transfer system comprising a space between the collar and inlet (as seen in Fig 1, a space surrounds the inlet conduit) with the conduit extending into the bag.

Todd does not specifically disclose a lay flat bag.

Huber discloses a bodily fluid collection system using a lay flat bag (as variously seen but best depicted in Fig 8).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Todd to use a lay flat bag as taught by Huber for the well-known predictable advantage of providing easy storage of the bags when not in use.

Todd does not specifically provide a pulsed vacuum.

Prentiss discloses a fluid collection system whereby either constant or pulsating pressures may be used to extract the fluid to be obtained (col 4, lines 37-40; col 5, lines 6-10).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Todd to use a pulsating vacuum as taught by Prentiss as this is an art-recognized technique for predictably extracting fluid to be obtained.

Regarding claims 4, 7 and 8:

The discussion above regarding claims 1 and 6 is relied upon.

Todd as modified renders the collar relatively rigid when compared to the bag (as seen in the figures, it generally holds its shape; also, the collar is adapted to be sealed by a top, plug or lid, page 4, lines 18-20).

However, should the applicant be of the opinion that the collar is not relatively rigid, it would have been a matter of common sense to a person having ordinary skill in the art at the time the invention was made to have modified the collar to be relatively rigid to hold a lid for closure (as desired by page 4, lines 18-20).

Regarding claim 9:

The discussion above regarding claim 1 is relied upon.

Todd as modified renders the housing sufficiently rigid to retain its shape under the applied vacuum (page 2, lines 9-22).

Regarding claims 10-12:

The discussion above regarding claim 1 is relied upon.

Todd as modified renders the bag holding 20 liters (a “20 liter jerry can”).

Regarding claims 13 and 14:

The discussion above regarding claim 13 is relied upon.

Todd as modified renders the housing having side and bottom walls, and a lid (109) comprising a top wall and further comprising a fluid inlet (the opening for the fluid) comprising

a conduit (the inlet conduit) extending down from the wall of the lid to provide an inlet port, but does not disclose the lid containing the port for providing the vacuum.

Todd discloses an alternative embodiment wherein the vacuum port is in the lid (Fig 1).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Todd to locate the vacuum port in the lid as taught by Todd as this is a well-known predictable functionally equivalent position for providing a vacuum force in the container.

Regarding claims 15 and 16:

The discussion above regarding claim 1 is relied upon.

Todd as modified renders the inlet conduit provided with the retaining system for cooperation with the collar (to supply fluid therethrough), the collar being relatively rigid (as noted with regards to claim 4) and defining a flange (210 has a wider top than base) adapted to cooperate with the retaining system for receiving liquid.

Regarding claims 17 and 18:

The discussion above regarding claim 1 is relied upon.

Todd as modified renders the bag comprising an internal pocket (a portion of the inside of the bag in the handle of the bag) to allow sampling of the contents.

Claim 18 is a product-by-process claim, and only the resulting structure is considered.

Regarding claim 19:

The discussion above regarding claim 17 is relied upon.

Todd as modified renders the pocket as less than 5% of the total volume.

Regarding claim 23:

The discussion above regarding claim 1 is relied upon.

Todd as modified renders collecting colostrum, which may be considered "specialty milk," and is deemed to meet the claim as there is no specific action particularly required when this milk is collected.

Regarding claim 25 and 26:

The discussion above regarding claims 1 and 24 is relied upon.

Todd as modified renders a pressure oscillation system (to provide the pulsating vacuum).

3. Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al. ('441) in view of Huber ('037) as applied to claim 1 above, and further in view of Karnath et al. (US 3 242 903).

Regarding claim 20:

Todd as modified renders a fluid collector for a milking machine comprising a plurality of teat cups (page 6, lines 5-6) a vacuum source for applying a vacuum to the teat cups (page 6,

lines 5-7), and a vacuum line for providing the vacuum (connected to 117), but does not specifically disclose a reservoir for collecting relatively large volumes of milk.

Karnath teaches a milking machine which separates out a small amount of liquid having a reservoir for larger amounts of liquid (20).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Todd to use the components of Karnath for the advantages of collecting the main milk supply for use rather than merely sample, and to further distribute the milk supply into smaller containers for ease of shipping, distribution, storage, etc.

Regarding claim 22:

The discussion above regarding claim 20 is relied upon.

Todd as modified renders discloses an apparatus for collecting liquids, but does not disclose a case for freezing the liquids to provide a thickness of less than 20 cm.

The examiner takes Official Notice that freezers are well-known in the art as cases for freezing liquids for later use.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Todd to freeze the liquid in a freezer as the examiner takes Official Notice that freezers are well-known in the art for freezing liquids for later use. The failure to traverse the Official Notice in the response renders the teaching **admitted prior art**. See MPEP 2144.03.

Further, it would have been an obvious matter of design choice to ensure the filled and frozen bags did not expand past 20 cm, since applicant has not disclosed that this thickness

solves any stated problem or is for any particular purpose and it appears that the invention would perform equally as well with the frozen bags as provided by the modified Todd device.

#### ***Response to Arguments***

4. Applicant's arguments filed 15 March 2011 have been fully considered but they are not persuasive.

In response to applicant's argument that Todd teaches away from a lay flat bag (page 9), the cited section does not "require" a standing bag as argued, but only a bag within the housing and having an inlet pipe within the bag opening. As long as the inlet pipe can enter the bag for fluid collection, Todd is functional.

5. Applicant's further arguments with respect to claims 1, 24 and dependencies have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is (571)272-6337. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 300 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy D. Collins can be reached on (571)272-6886. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOSHUA J MICHENER/  
Primary Examiner, Art Unit 3644

/J. W. S./  
Examiner, Art Unit 3644